ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	*FOR COURT USE ONLY*
Richard Quigley, Defendant/Appellant, pro se 2860 Porter Street, pmb #12 Soquel, CA 95073 TELEPHONE NO.: 831-685-3108 FAX NO.: ATTORNEY FOR *(Name)*:	
NAME OF COURT: Superior Court of California, County of Santa Cruz STREET ADDRESS: 701 Ocean Street MAILING ADDRESS: 701 Ocean Street CITY AND ZIP CODE: Santa Cruz, CA 95062 BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT/APPELLANT *(Name)*: RICHARD QUIGLEY	
PROPOSED STATEMENT ON APPEAL (Infraction)	CASE NUMBER: Sup. Ct. #00076532, 00284402, 00089880, 00110366, 00173447, 90332665

Defendant/Appellant ***(Name)***: QUIGLEY submits the following ***Proposed Statement on Appeal***:

GROUNDS FOR APPEAL

1. ***Specify in detail your reason for why you feel the judge committed "error" regarding the law or procedure. Note that credibility of witnesses is generally not a basis for appeal)***:
   a. The court never had lawful jurisdiction – the court assumed jurisdiction without requiring the requisite filing of a verified complaint by the public prosecutor pursuant to CVC40610(b) upon request of the defendant (then the accused).
   b. The court had allowed the prosecutor to amend the complaint without input from the (police) officer who filed the complaint, but would not amend the complaint on motion from the defendant with the officer present, and testifying to his mistake in filling out the citation.
   c. The court denied the defendant's fundamental rights to due process relative to notice and opportunity to defend in an impartial forum in front of an impartial Triar of Fact.
   d. The court allowed, and accepted, inadmissible testimony (or himself testified as to matters of which he had not personal knowledge) and allowed, if not promoted, prosecutorial misconduct on the part of the public prosecutor, to the detriment of the defendant.
   e. The court either didn't understand, or refused to abide by, the plain language of the relevant statutes, or relevant binding precedent decisions from courts of higher jurisdiction – either or both mis-citing or rewriting each to make a case for the prosecutor where none otherwise existed.
   f. The court denied the defendant a fair and impartial trial (in the context of a trial) and in all other ways, denied the defendant's constitutionally protected rights as a Free and Natural Person as defined in Article I, Section 1, of the Constitution of California.

STATEMENT OF EVIDENCE

2. ☐ Theabove-entitled matter was reported by an official court reporter or electronically recorded and appellant intends to file a reporter's transcript of the evidence and proceedings so reported and to make the transcript appellant's statement on appeal.

3. ☑ Instead of a transcript the appellant is submitting the following statement on appeal:

Initially, the defendant requested that a verified complaint be filed, pursuant to 40513(b), so that he would know the nature of the action and the extent of the allegations.

The court ruled that the citation was a proper complaint and assumed jurisdiction (against the will and over the objection of the defendant).

Next, the defendant demurred to the complaint(s) – arguing that the various citations did not comply with the requirements of a proper complaint pursuant to Penal Code §1004.

The court overruled the demur, ruling that the complaint was adequate notice of the offense charged.

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3. a. ***(continued)***:

The first day of the first hearing, with a court reporter present, the charges were reported to the defendant along with a request for a plea. When the defendant inquired as to what was the charge, the court stated it was a violation of 27803VC. Defendant specifically inquired as to whether he was being charged with any of the provisions of CVC 40610. The prosecutor said the defendant was not being charged with violating 40610.

The defendant asked about the several citations that alleged violations of CVC 27803(a), which is NOT a violation. The court allowed the DA to amend the complaints to CVC27803(b) with no input whatever from the officers that had filed the complaints.

From that day, to the last, the defendant sought to determine what case law would be applied, and how, so that he could prepare a defense to the allegations. This was never explained to the defendant.

On January 26, 2001: the defendant offered into evidence, and asked the court to take Judicial Notice, of the two citations that had been issued correctly – issued as correctable equipment violations pursuant to CVC 40303.5 – and signed off by the CHP. The correction fee was waived on both citations (by the Traffic Court, Referee Mulligan). The defendant also asked the court to take Judicial Notice of the DA's Reply Brief on appeal, and the manner in which the DA failed to respond to the specifics relative to application of CVC 40303.5. (The defendant also moved to recuse to the DA from prosecuting the case, on the grounds that he was not following the law relative to applying the power of the District Attorney to seek justice under the law.) Although the court seemingly too Judicial Notice of the corrected citations, and of the DA's failure to respond intelligently on appeal to the issue of correctability; the court's only ruling was to move the case back another month in response to the DA's motion.

On January 26, 2001: the court also stated that since it was dealing with these issues at trial, that he, Judge Danner, would not be sitting on the appellate panel – which, history will show, was a false statement in that he did sit on the appellate panel. (Apparently the February hearing was moved back to March.)

On March 9, 2001: the defendant again tried to get the issue of whether or not he was going to be required to defend against allegations of violating one or more of the elements of CVC 40610 – filing judicial notice of the Order on Appeal and Certification of Issues to the 6th – and pointing to the fact that the DA had not settled in that appeal on the reasoning behind not treating the matters as correctable, the court stated: "The smart thing from the standpoint of a court . . . officer is to ah not be pinned down from the standpoint of, you know, the issues, and let them go up and be decided, because then the appeal ah can be decided on any and all issues, you see." In other words, the defendant continued to attempt to ascertain the nature of the violations – correctable equipment violations, or not – prior to a trial, only to be told that it was the "smart thing" for the DA not to make that clear so that it could be decided "later" on appeal. In any case, the next "hearing" was scheduled for June 8, 2001.

On June 8, 2001: the defendant entered a plea of "not guilty" to the remaining counts of alleged violations of CVC27803(b). The next hearing was scheduled for July 13, 2001.

On July 13, 2001: defendant was present and ready to proceed. The DA didn't show. The next hearing was scheduled for July 17, 2001.

On July 17, 2001: defendant was present and ready to proceed. The DA didn't show. The next hearing was set for August 31, 2001.

August 31, 2001: defendant asked for a stipulation that DOT does not approve helmets, introduced into evidence a letter from NHTSA to Bianco explaining that DOT does not approve helmets. The prosecution declined. Defendant challenged prosecutor's entry into judicial notice of an incomplete copy of FMVSS218 (the federal test standard for motorcycle helmets) and introduced in it's

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3. a. ***(continued)***:

place a complete copy of FMVSS218, including illustrations. Defendant entered into evidence, or provided Judicial Notice, of pages 11-15 of the petitioner's brief in *Buhl v. Hannigan* so the court would have the opportunity to understand the arguments the underpinned the *Buhl* decision. Defendant explained the reasoning of both the *Buhl* and *Bianco* decisions, and the history that led up to those decisions — including the text of a letter from an appeals attorney, Bennis (former research attorney for Justice Mosk), who wrote to the *Bianco* court, amicus, explaining the problem with it's un-modify opinion, which the court did ultimately modify. Then defendant explained the basis for the decision from Easyriders upholding an injunction against writing citations that differed in no significant way from those issued to the defendant.

Defendant submitted and asked the court to take judicial notice of *Washington v. Maxwel*l (a decision that said that FMVSS218 cannot constitutionally be applied to a helmet user – see file). Defendant objected a second time to the entry of FMVSS218 into the case file or accepted by the court as relevant. The defendant asked what, if any, reasonable regulations have been adopted by the Department of California Highway Patrol pursuant to CVC27802, and objected to their not having been produced on discovery. Defendant introduced the meaning of "basic plain" in FMVSS218 and provided a copy of a Pennsylvania decision that read portion of 218 as requiring a helmet to come to the middle of the ear. Defendant also pointed out that a helmet is not required to have a chin strap pursuant to 218, but a "retention system " — pointing out that the only "requirement" of FMVSS218 was labeling.

The defendant made a point of complaining about the failure of the prosecution to provide discovery . . . the prosecutor argued against providing discovery, stating the request was "over-broad". The judge admitted that he could not see any of the items that been handed to him because he was not wearing his glasses, and therefore would not rule on the defendant's complaint about the failure of the prosecutor to provide discovery. The court put off that ruling until a later time (which ended up being set for September 5, 2001) and then suggested that the trial date be moved back. The defendant strongly objected pointing out that he was prepared for trial on September on September 7, 2001, and stated he was not prepared to go beyond that date — that things had dragged on long enough.

The parties stipulated that the defendant was wearing "something" on his head at the time he was stopped and cited. The court would not stipulate that the helmet standard does not have to be uniform, in spite of defendant's arguments that stated that helmet standards must be the same for all states. The court said it disagreed with the defendant but would rule at the next hearing.

Defendant asked for a stipulation, relative to the standard/definition of a helmet, of the supremacy clause that requires that ALL helmet standards, including the court's, be "identical" to the federal standard. The court ruled: "He's not gonna ever be able to stipulate to that. . . . The State of California has all kinds of different rules, in terms of transportation, than other places. Some places you can have, you know, double, triple tractors or trailers of whatever you call 'em, and some states don't. . . . I'm not saying you're wrong, Mr. Quigley, I'm just saying he's not going to stipulate to that."

In search of some sort of concrete definition of the term "safety helmet" the defendant attempted to get a stipulation as to what or who decides, to which the court responded: "As I understood it originally, the people's position was, look, a helmet is a helmet. And from the very nature of what that's supposed to be, it's supposed to be some sort of protective device for the head, okay. At least I understood that that was part of their position." The defendant asked, "Where is that set out in the criteria?" The court replied, **"It doesn't have to be set out the criteria. There has to be some fundamental understanding that a helmet is not going to be some type of device that merely adorns the head or otherwise serves no purpose for public protection."**

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3. a. ***(continued)***:

The conversation was concluded there, the judge (once again) explaining that he had more pressing matters to attend, and the next hearing was set for September 5, 2001.

September 5, 2001: The subject of the discovery request was brought back for a ruling, with the prosecutor maintaining that the request was "overbroad." The court did not require that the prosecution provide documentation that would show the defendant had the "actual knowledge" required by the *Bianco* Court, or "nonconformity" with FMVSS 218. The defendant objected pursuant to *Bianco.*

The prosecutor stated that sections D, E, and F of the discovery were irrelevant and overbroad. Relative to section D, the prosecutor said that he had nothing that would comply with the request, but said that, having spent "a lot of time looking at this over the weekend" he would be introducing Webster's dictionary to define helmet, together with his child's bicycle helmet and baseball cap. Relative to E, the prosecution said that he did not know if a CHP policy of helmet law enforcement existed, and that if it did, it would be irrelevant because it had become a fact determination for the court. The defendant stated it was relevant because of the lack of guidelines required for constitutional enforcement.

The court ruled that the CHP policy of enforcement (or lack there of) would not make any difference to the court as a fact-finding issue – "I don't care what their policy is. It can be in contravention of what the law requires such that the policy would be totally in the face of the law," and it would still be irrelevant.

The defendant reiterated that the original enforcement policy of the CHP was found by the US District Court, upheld by the 9th Circuit, to be unconstitutional, and that the defendant did not have access to whatever was issued in it's place.

The defendant also reiterated that to challenge the constitutionality of the statute, he had to prove BOTH the statute provided no reasonable way for a rider to know how to comply, AND that the statute did not provide law enforcement with sufficient instruction as to how to enforce the statute. The court maintained that the enforcement policy was irrelevant. The defendant reminded the court that it was acting without jurisdiction. And the defendant renewed his complaint that each of the at-issue citations had been violative of his 4th Amendment rights in the *Easyriders* decision by the 9th. The court stated that he could not grasp a vagueness argument, and suggested one of equal protection. In sum, the court ruled: "If it's not a common sense definition of a helmet, that's what's gonna be cited for" – establishing a "common sense" standard in an ocean of evidence that no such standard can be applied to the helmet law.

The defendant stated that the *Buhl* court set aside any possibility of a "common sense" standard, and the court disagreed, stating: " . . . that's what we're talking about here, you know, and is that a helmet's a helmet's a helmet, you know, a rose by any other name. That's what we're talking about. And so, that's the People's position." Followed with, "I'm not saying I'm right. I saying, that's the People's position." As for F, a copy of the "reasonable regulations" required by CVC 27802, the court asked the prosecution what his position was on the need to produce the regulations required in 27802, taking the time to rule that "at one point on the spectrum, you know, a baseball cap is not a helmet."

In an attempt to get some of the stipulations resolved, the prosecution would not stipulate that the (US) Department of Transportation does not approve helmets, saying he would leave it to the court to decide that. The defendant again addressed the issue of the nature of the charge(s) – general or specific intent, citing *Easyriders*. The prosecution stated "Federal cases are never binding on the California court, never. They can be persuasive, but they're never binding." The prosecution said that the authority was from some 1969 case, but did not know what the name of the case might be. The court concurred. Defendant stated that he believed the 9th would find it interested to know that in Santa Cruz, not only were opinions from the 9th not to be respected, but should otherwise be disregarded. The prosecution said, "I think with all the cases the Supreme Court takes up, they know

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3. a. ***(continued)***:

that." The court ruled, ". . . let me read Easyrider, and I think that's an issue in your case. Because if I find, for example, that that mental state on your part is required, given the way the law reads, then you could certainly argue that's making it a specific intent crime. I don't know if that's the case. I don't want to split hairs with you, but I probably would not make that ruling at this time until I'm clear on the other factors in the case."

The defendant gave the court *Juvenile Products v. Edmudson, People v. Woods,* a letter from NHTSA to Gill Garcetti, a Georgia decision find a baseball cap as head protection, all of which the court accepted "*amicus.*" The defendant argued, relative to the definition of a helmet per Webster's, that more than half of the states with helmet laws use the term "head protection" in place of the term "helmet." The court explained that all that was well and good, but that "most people" don't consider a baseball cap a helmet; continuing: ". . . I really don't have any need for this law. I mean, if it were up to me, I'd say, 'Don't have it.' And then let everybody ride at their own risk. But then what will happen is that somebody will sue the state." A discussion ensued as to whether or not the court would allow the impending trial to be videotaped, per request of Joel Koppa. The prosecution objected, stating: "My feeling is that the officers are not wanting to be filmed and be part of a documentary. I mean, they would like to come in and testify, but . . . if they think they're going to be turning themselves on, there's going to be part of a continuous loop on community television, I was hoping that this court trial would be open and, I'm just always concerned about when you put cameras in front of people they would tend to clam up or are not as open, and I don't think the officers want to be a part of it." And continued: "Under 9-8-3, the effect on witnesses is something the court can consider." The court said they would make that decision on the day of the trial, which was set for September 7, 2001.

September 7, 2001: The defendant started by asking for a ruling on the nature of the case — specific or general intent – so that he would know what questions from the prosecution would warrant object, and what area of inquiry would be appropriate for his defense. The court stated it did not have time to deal with the question, but that it would provide "wide latitude on the issue of whether or not there's any mental state or specific intent required."

The defendant introduced Steve Bianco – the defendant's expert witness as to the history of the helmet law, who's testimony would go to the vagueness of the statute – and asked to have Bianco join the defendant at the defense table.

The prosecution moved to exclude all witnesses, which the court sustained.

The defendant once again explained that he had absolutely no idea what questions or line of defense were going to be available, in that the court had refused to state the nature of the case – specific intent or general intent – but stated that the "rules" for this trial were that the questions could be raised as to BOTH. The defendant complained that such a scheme left him with the impression that such a ruling left him without any understanding as to what the rules were going to be. "Those are the rules. We're going to proceed and hear the testimony."

The defendant again explained that that left him with just the reasonable conclusion that for the purposes of this hearing, there are no rules. The court said, "You can conclude what you want, Mr. Quigley, that's what I'm going to do." Forced to proceed, the defendant once again stated his objection to the lack of jurisdiction by the court; officially pulled Bianco as a witness; and once again stated that he had no idea how to proceed – in particular stating that as defendant, he had no foundation to base objections to testimony in that the prosecutions theory of the case was still not on the record. The defendant specifically requested a ruling as to the defendant's objection of entering FMVSS 218 into the record by Judicial Notice, and again objected to not knowing the outcome of his other requests for rulings as to the nature of the case. The defendant complained that he could not launch a defense when the court would not decide on those issues. The court said, "Mr. Quigley, I don't see it that way. And I understand that you do. That is preserved on the record and there's

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3. a. ***(continued)***:

going to be nothing the matter, later, with you raising the arguments with regard to both defenses as far as I'm concerned. You're entitled to any and all, and the court will allow that." Next, the court addressed the issue of the prosecution's request to exclude witnesses, in particular Mr. Bianco, stating: "You want him to stay in the courtroom so he hears the testimony? That's exactly why Mr. Margandi wants him excluded." The officers were excluded and Mr. Bianco was pulled from the list of witness for the defense so that he could remain.

The nature of the proceedings was some sort of evidentiary hearing where the testimony of police officers was taken – most having to do with their opinions of what constitutes a properly fabricated helmet, not a trial. There was no opening statement by either party, or the court. All objections by the defendant (the prosecution has his objections, for the most part, sustained on the spot) were put off for determination at some later time.

Testimony from the officers commenced without opening arguments from either side, nor any of the other trappings normally associated with a "trial." Defendant stipulated that none of the questions having to do with the status of the officer – deputy, city police, or whatever – would be necessary, the defendant conceding that they were all police acting in accordance with their perception of their respective duties.

The defendant objected to any and all testimony relating to helmet fabrication, including what could be presumed or assumed by the "appearance" of the defendant's headgear (save for the letters "DOT" being present on the headgear) at the time the citations were issued, relying on the language of *Buhl* which stated that just the mere "proposition that the statute would require the consumer or enforcement officer to determine if a helmet is properly fabricated . . . is absurd." The defendant was as insistent as the court would allow in stating his objection to such evidence being introduced into evidence – objections the court ruled would be considered "running" objections, which, the court stated, would be ruled on at a later time.

There were no opening arguments from the prosecutor, so there was no theory of the case put forward by the DA, save his stated position early on that "the defendant was either wearing a helmet, or he wasn't."

Perhaps the most devastating conduct by the prosecutor, supported by the court, was the prosecution's coaching excluded witnesses as to what had transpired while they had been excluded, and suggesting responses to questions I had asked the previous. Although the defendant complained of the conduct, because of the general instruction against the defendant entering any more objections, the defendant was not free to move for a mistrial – although the court did say it would deal with the defendant's complaint about the conduct at a later time.

The attached Proposed Statements on Appeal cover the testimony taken at the hearing of September 7th from the various citing officers, and constitute the balance of this Proposed Statement on Appeal.

There was no record made the day of the court's ruling (October 12, 2001, as I recall), but a "SUPPLEMENTAL WRITTEN ORDER" was signed Judge Danner and filed on October 25, 2001; amended and refiled on November 01, 2001.

Defendant filed a timely Notice of Appeal. (See other attached Proposed Statements on Appeal)

FINDINGS OF THE COURT

4. The court determined defendant was guilty and assessed a fine of: SEVENTY-SEVEN DOLLARS

5. Number of pages attached 12

Date: November 26, 2001

RICHARD QUIGLEY ▶

(TYPE OF PRINT NAME) (SIGNATURE OF DEFENDANT/APPELLANT OR ATTORNEY)